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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 LINDSAY JENKINS,

10 Plaintiff,

11 v.

12 JPMORGAN CHASE BANK, NA,
13 *et al.*,

14 Defendants.

No. C09-0052TSZ

ORDER

15 This matter comes before the Court under Local General Rule 8(c). Plaintiff has
16 filed a “Motion to Recuse Judge Zilly” in the above-captioned matter. Dkt. # 22. The
17 Honorable Thomas S. Zilly, United States District Judge, declined to recuse himself voluntarily
18 and the matter was referred to the Chief Judge. Dkt. # 25. Plaintiff’s motion is therefore ripe for
19 review by the undersigned.

20 Section 455 of title 28 of the United States Code governs the disqualification of a
21 district judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United
22 States shall disqualify himself in any proceeding in which his impartiality might reasonably be
23 questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

24 Whenever a party to any proceeding in a district court makes and files a timely and
25 sufficient affidavit that the judge before whom the matter is pending has a personal
26 bias or prejudice either against him or in favor of any adverse party, such judge
shall proceed no further therein, but another judge shall be assigned to hear such
proceeding. The affidavit shall state the facts and the reasons for the belief that

ORDER

1 bias or prejudice exists.
2 A judge must recuse himself if a reasonable person would believe that he is unable to be
3 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). A litigant cannot,
4 however, use the recusal process to remove a judge based on adverse rulings in the pending case:
5 the alleged bias must result from an extrajudicial source. United States v. Studley, 783 F.2d 934,
6 939 (9th Cir. 1986).
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8 Plaintiff argues that Judge Zilly's dismissal of her claims against JPMorgan Chase
9 on jurisdictional grounds and the issuance of an order to show cause regarding her claims against
10 Fisher and Shapiro, LLC, are legally and factually incorrect. Objections to a judge's decisions
11 are properly raised through an appeal, however, not a motion to recuse. If, as plaintiff suggests
12 in her other filings, she can support her claim that she is a citizen of the United Kingdom, her
13 remedy lies in presenting supporting evidence to Judge Zilly and/or appealing his determinations
14 to the Ninth Circuit Court of Appeals.
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16 Apparently recognizing that an extrajudicial source of prejudice is necessary,
17 plaintiff asserts that Judge Zilly has been malicious, rude, and "assaultive" toward her and
18 hypothesizes that he either dislikes women, the British, mortgagees, or the world in general or
19 "has some sympathy for a failed local institution or a former law clerk." Dkt. # 22 at ¶ 6.
20 Plaintiff has not substantiated any of her allegations. No hearings, teleconference, or in-person
21 interactions of any kind are reflected in the record, and Judge Zilly's orders are measured and
22 professional, with no hint of "assaultive behavior" or a "lack of courtesy." Plaintiff's conjecture
23 regarding the possible source or sources of the alleged bias is equally unsupported. Plaintiff
24 filed this motion to recuse only after Judge Zilly entered a dispositive order in favor of one of the
25 defendants. The risk that plaintiff is using her unsupported allegations of bias to overturn a
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1 decision on the merits is therefore considerable. In effect, plaintiff is seeking to remove Judge
2 Zilly from this case because of his performance while presiding over this matter. Because a
3 judge's conduct in the context of pending judicial proceedings does not constitute the requisite
4 bias under § 144 or § 455 if it is prompted solely by information that the judge received in the
5 context of the performance of his duties as the presiding judicial officer, bias is almost never
6 established simply because the judge issued an adverse ruling.
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8 Having reviewed the record in the above-captioned matter, the Court finds that
9 plaintiff's allegations are baseless and do not support her request for recusal. Judge Zilly's
10 orders reflect the reasonable resolution of the issues before him based on the evidence provided
11 at the time. Plaintiff is pursuing her claim of diversity jurisdiction before Judge Zilly and, if
12 unsatisfied with his final ruling, can raise issues on appeal. She has not raised an inference of
13 bias, and the Court finds that Judge Zilly's impartiality cannot reasonably be questioned. There
14 being no evidence of bias or prejudice, plaintiff's request to remove Judge Zilly from this matter
15 is DENIED.
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18 Dated this 10th day of June, 2009.

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20 
21 Robert S. Lasnik

22 Chief Judge, United States District Court
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